IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2513 of 2002
with
SPECIAL CIVIL APPLICATION No 3227 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LADHABHAI MONABHAI MANGKIYA
Versus
GUJARAT ELECTRICITY BOARD

Appearance:
1. Special Civil Application No. 2513 of 2002
MR BM MANGUKIYA for Petitioner No. 1
NOTICE SERVED for Respondent No. 1-3
MS LILU K BHAYA for Respondent No. 4
2. Special Civil Application No. 3227 of 2002
MR BM MANGUKIYA for Petitioner No. 1
..... for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 12/09/2002

ORAL(COMMON)JUDGEMENT

Rule. Ms.Bhaya appearing on behalf of respondents wiaves service of rule. With the consent of parties matters are taken up for final hearing today.

2. Present petitions are preferred against the issuance of bill by the Meter Reader. It is the case of the petitioners that the Meter Reader has no authority to issue such bill. A perusal of the bill which is issued shows that there is a noting that the meter is kept above. The contention of the petiioner is that the meter was found to be working in proper condition and there was absolutely no basis for the purpose of issuing additional bill. The petitioner contends that, as a matter of fact, merely because the meter reader found that the meter has stopped is no ground for arriving at conclusion on his own, that too, without giving opportunity, whatsoever, to the petitinoer. It has been submitted that therefore the decision of issuing the bill by the meter reader and insistence for recovery of same by the Gujarat Electricity Board should be declared as illegal.

3. On behalf of respondents, Ms.Bhaya has submitted that since the meter at the relevant point of time was found to be in tilting condition it had stopped and did not record the actual consumption of the electricity supply used by the petitioner. Since it was found that the meter did not record the actual electricity consumption, on the basis of load supplied to the petiioner and also on the basis of probable use of electricity by the petitioner the bill has been issued. It has also been submitted on behalf of respondent Board that the petitioner has not paid the regular bill from May 2000 to January 2002 and that the amounts of regular bills do not form part of disputed bill. In response thereto Mr.Mangukia submitted that as a matter of fact attempts were made on the part of petitioner to forward the payment of regular bills but the same is not accepted on the ground that the disputed bills are not paid by the petitioners.

4. In any view of the matter, it appears that there is no dispute between the parties that so far as regular bills are concerned they must be paid by the petitioner irrespective of the question regarding disputed bill. However, so far as the disputed bill is concerned the basis shown by the respondent Board is probable use on the basis of load supplied to the petitioner and on the basis of probable use of machineries and other

connections which are used by the petitioner. As a matter of fact, there is no dispute on the point that any opportunity of hearing has not been given to the petitioner. There is no dispute on the point that the meter was working slowly or there was any theft. Even if one has a particular load supply it is not necessary that one should use to the fullest extent. It may be in given circumstances 100% utilisation may be made by the consumer. Whether the consumer has used the power supply to the fullest extent of the load supplied by the Electricity Board or not is a question of fact which can be examined only if proper opportunity is given to the party to show by the documentary evidence and other relevant circumstances regarding utilisation of machines etc. It may be that for some days the factory is closed then the question may not arise for the purpose of considering the utilisation of electricity during those days. Since the opportunity of hearing has not been given to the petitioners before issuing the disputed bill, primafacie, it appears that the issuance of bill on the basis of probable use is not warranted under law. Ms.Bhaya wanted to submit that one of the conditions is that in such a case the decision is to be taken by the officer of the Electricity Board and such decision is to be accepted by the consumer. I am afraid that such condition may be enforced in such a manner. Even if there is condition, it has to be read with principles of natural justice and it can not be reae to have absolute power, that too without giving opportunity to the person concerned. It is basic principle that when any adverse order is passed the person concerned must be given opportunity of hearing and thereafter the decision may be rendered. The same has not happened in the present case and therefore considering the facts and circumstances of the case I am of the view that the following directions would meet with the ends of justice:

(i) The petitioner shall pay the regular bills within a period of 15 days from today.

(ii) After payment of regular bills within 15 days thereafter the petitioner shall make detailed representation together with necessary evidence supporting or showing probable use of electricity power during the period when the meter had stopped working. Such representation shall be made by the petitioner to the Superintending Engineer, Bhavnagar.

(iii) After the receipt of representation by the Superintending Engineer, Bhavnagar, he he will examine the matter and call for necessary other details which may

be found by him proper considering the facts and circumstances of the case including the load shedding of the petitioner and shall also give to the petitioner opportunity of making oral submissions.

(iv) After the aforesaid exercise is undertaken, the decision shall be rendered by the Superintending Engineer, Bhavnagar within a period of two months from the date of receipt of representation made by the petitioner.

5. It is made clear that until the decision is rendered by the Superintending Engineer, Bhavnagar, as indicated earlier, the disputed bill shall remain in abeyance and after the decision is rendered, the authorities shall proceed in accordance with law for the recovery of the disputed bill pursuant to the decision of the Superintendent Engineer without prejudice to the right of the parties to challenge the same, if otherwise permissible under the law.

6. Both the petitions are allowed in terms of above directions and rule in each petition is made absolute accordingly. There shall be no order as to costs.

12.9.02 (JAYANT PATEL,J)